

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

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PLR-101191-12

Date:

May 01, 2012

LEGEND

X =

State =

Date =

1

Date =

2

Year =

1

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3

Dear :

This responds to a letter dated December 30, 2011, together with subsequent correspondence, requesting a ruling under the Internal Revenue Code.

FACTS

X incorporated under State law on Date 1. X elected to be treated as an S corporation effective for Year 1. In Year 2, State administratively dissolved X because X failed to file a report required by State. From Year 2 to Year 3, X was unaware of the dissolution and continued to file Form 1120S, U.S. Income Tax Return for an S Corporation. Upon discovery of the dissolution, X reincorporated in State on Date 2.

Now X is requesting a ruling whether:

- 1) X's status as an S corporation is terminated by reason of its administrative dissolution under the laws of State;
- 2) X, subsequent to its reincorporation, is required to make a new election under § 1362(a) of the Code;
- 3) X's administrative dissolution and subsequent reincorporation resulted in a distribution or contribution of property for the purposes of §§ 301(a), 311(a)(2), 336(a), or 351;
- 4) X's administrative dissolution and subsequent reincorporation affects its shareholders' basis and holding periods in X stock; and
- 5) X may use the employer identification number assigned to it prior to its administrative dissolution and is, therefore, not required to apply for the assignment of a new employer identification number following its reincorporation.

LAW AND ANALYSIS

Section 1361(a)(1) defines the term "S corporation," with respect to any taxable year, as a small business corporation for which an election under section 1362(a) is in effect for such year.

Section 1361(b)(1) provides, in part, that a "small business corporation" must be a domestic corporation.

The core test of corporate existence for purposes of federal income taxation is always a matter of federal law. Whether an organization is to be taxed as a corporation under the Code is determined by federal, not state law. If the conduct of the affairs of a corporation continues after the expiration of its charter, or the termination of its existence, it becomes an association. See Ochs v. United States, 305 F.2d 844, 847 (Ct. Cl. 1962), cert. denied, 373 U.S. 923 (1963). A corporation is subject to federal corporate income tax liability as long as it continues to do business in a corporate manner, despite the fact that its recognized legal status under state law is terminated. See Messer v. Commissioner, 438 F.2d 774 (3rd Cir. 1971).

CONCLUSION

Based solely on the facts submitted and the representations made, we conclude that provided that X qualified as a small business corporation under § 1361(b) prior to the administrative dissolution under state law:

- 1) X's status as an S corporation is not terminated by reason of its administrative dissolution under the laws of State;
- 2) X is not required to make a new election under § 1362(a);
- 3) The administrative dissolution and subsequent reincorporation of X under state law did not, by itself, result in a distribution or transfer of property for purposes of sections 301(a), 311(a)(2), 331(a), 336(a), or 351;
- 4) X's administrative dissolution and subsequent reincorporation does not affect its shareholders' basis and holding periods in X stock; and
- 5) X may use the employer identification number assigned to it prior to its administrative dissolution and is, therefore, not required to apply for the assignment of a new employer identification number following its reincorporation.

Except as expressly provided herein, we express or imply no opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express or imply no opinion as to whether X is otherwise eligible to be an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

James A. Quinn
Senior Counsel, Branch 3
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
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